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Attorneys for Plaintiffs

and Third-Party Defendants,

the SS Companies

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD.,  
a Japanese corporation,

Plaintiff,

vs.

QK HOTEL, LLC, a Hawai'i  
limited liability company,  
et al.,

Defendants,

and

) CIVIL NO. CV 04-00124  
) ACK/BMK  
)

) CONSOLIDATED CASES  
)

) **THE SPORTS SHINKO**  
) **COMPANIES' ANSWER TO**  
) **THE KG ENTITIES'**  
) **THIRD-PARTY COMPLAINT**  
) **FILED JANUARY 22, 2007;**  
) **CERTIFICATE OF SERVICE**  
)

)  
FRANKLIN K. MUKAI, et al., )  
)  
Third-Party Plaintiffs, )  
)  
vs. )  
)  
SPORTS SHINKO (USA) CO., )  
LTD., a Delaware corporation, et )  
al., )  
)  
Third-Party )  
Defendants, )  
)  
and )  
)  
SPORTS SHINKO (HAWAII) CO., )  
LTD., a Hawai`i corporation, )  
et al., )  
)  
Third-Party Defendants/ )  
Counterclaimants, )  
)  
vs. )  
)  
QK HOTEL, LLC, a Hawai`i )  
limited liability company, )  
et al., )  
)  
Third-Party Counterclaim )  
Defendants. )  
\_\_\_\_\_ )

SPORTS SHINKO (USA) CO.,	)	CIVIL NO. CV 04-00125
LTD., a Delaware corporation,	)	ACK/BMK
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PUKALANI GOLF CLUB, LLC,	)	
a Hawai'i limited liability	)	
company, et al.,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
FRANKLIN K. MUKAI, et al.,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
vs.	)	
	)	
SPORTS SHINKO CO., LTD.,	)	
a Japan corporation, et al.,	)	
	)	
Third-Party	)	
Defendants,	)	
	)	
and	)	
	)	
SPORTS SHINKO CO., LTD.,	)	
a Japan corporation, et al.,	)	
	)	
Third-Party Defendants/	)	
Counterclaimants,	)	
	)	
vs.	)	

PUKALANI GOLF CLUB, LLC,  
a Hawai'i limited liability  
company, et al.,

Third-Party Counterclaim  
Defendants.

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SPORTS SHINKO (USA) CO.,  
LTD, a Delaware corporation,

Plaintiff,

vs.

KIAHUNA GOLF CLUB, LLC,  
a Hawai'i limited liability  
company, et al.,

Defendants,

and

FRANKLIN K. MUKAI, et al.,

Third-Party Plaintiffs,

vs.

SPORTS SHINKO CO., LTD.,  
a Japan corporation, et al.,

Third-Party  
Defendants,

and

CIVIL NO. CV 04-00126  
ACK/BMK

SPORTS SHINKO (HAWAII) CO., )  
LTD., a Hawai`i corporation, )  
et al., )

Third-Party Defendants/ )  
Counterclaimants, )

vs. )

KIAHUNA GOLF CLUB, LLC, )  
a Hawai`i, limited liability )  
company, et al., )

Third-Party Counterclaim )  
Defendants. )

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SPORTS SHINKO CO., LTD., )  
a Japanese corporation, )

Plaintiff, )

vs. )

OR HOTEL, LLC, a Hawai`i )  
limited liability company, )  
et al., )

Defendants, )

and )

FRANKLIN K. MUKAI, et al., )

Third-Party Plaintiffs, )

vs. )

CIVIL NO. CV 04-00127  
ACK/BMK

SPORTS SHINKO (USA) CO., )  
 LTD., a Delaware corporation, )  
 et al., )

Third-Party )  
 Defendants, )

and )

SPORTS SHINKO (HAWAII) CO., )  
 LTD., a Hawai`i corporation, )  
 et al., )

Third-Party Defendants/ )  
 Counterclaimants, )

vs. )

OR HOTEL, LLC, a Hawai`i )  
 limited liability company, )  
 et al., )

Third Party Counterclaim )  
 Defendants. )

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SPORTS SHINKO (USA) CO., )  
 LTD., a Delaware corporation, )

Plaintiff, )

vs. )

MILILANI GOLF CLUB, LLC, )  
 a Hawai`i limited liability )  
 company, et al., )

CIVIL NO. CV 04-00128  
 ACK/BMK

Defendants, )  
)  
and )  
)  
FRANKLIN K. MUKAI, et al., )  
)  
Third-Party Plaintiffs, )  
)  
vs. )  
)  
SPORTS SHINKO CO., LTD., )  
a Japan corporation, et al., )  
)  
Third-Party )  
Defendants, )  
)  
and )  
)  
SPORTS SHINKO (HAWAII) CO., )  
LTD., a Hawaii corporation, )  
et al., )  
)  
Third-Party Defendants/ )  
Counterclaimants, )  
)  
vs. )  
)  
MILILANI GOLF CLUB, LLC, )  
a Hawai'i limited liability )  
company, et al., )  
)  
Third-Party Counterclaim )  
Defendants. )  
\_\_\_\_\_ )

**THE SPORTS SHINKO COMPANIES'  
ANSWER TO THE KG ENTITIES' THIRD-PARTY COMPLAINT  
FILED JANUARY 22, 2007**

Third-Party Defendants SPORTS SHINKO (HAWAII) CO., LTD., SPORTS SHINKO (MILILANI) CO., LTD., SPORTS SHINKO (KAUAI) CO., LTD., SPORTS SHINKO (PUKALANI) CO., LTD., SPORTS SHINKO RESORT HOTEL CORPORATION, SPORTS SHINKO (WAIKIKI) CORPORATION AND OCEAN RESORT HOTEL CORPORATION (collectively, the “SS Companies”), by and through their attorneys, Alston Hunt Floyd & Ing, hereby respond to Third-Party Plaintiffs KG HOLDINGS, LLC, KIAHUNA GOLF CLUB, LLC, KG KAUAI DEVELOPMENT, LLC, PUKALANI GOLF CLUB, LLC, KG MAUI DEVELOPMENT, LLC, MILILANI GOLF CLUB, LLC, QK HOTEL, LLC and OR HOTEL, LLC’s (collectively, the “KG Entities”), Third-Party Complaint filed January 22, 2007 (the “Third-Party Complaint”); as follows:

**FIRST DEFENSE**

1. The Third-Party Complaint fails to state a claim upon which relief may be granted.



## **SECOND DEFENSE**

2. The SS Companies admit the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6,7, 8, 9, 11, 12, 13, 16, 20, and 21 of the Third-Party Complaint.

3. The SS Companies deny each and every allegation contained in Paragraphs 17, 24, 25, 28, 29, 31, 32, 33, and 34 of the Third-Party Complaint.

4. In answer to Paragraph 10 of the Third-Party Complaint, the SS Companies admit that SS-Japan has been the majority shareholder of SS-USA and that SS-USA is a Delaware corporation, but deny that SS-Japan has been the “controlling shareholder” of SS-USA on the basis that this term is vague and undefined.

5. In answer to Paragraph 14 of the Third-Party Complaint, the SS Companies admit that one or more Plaintiffs owned, directly or indirectly, the SS Hawaii Entities, but deny that the SS Hawaii Entities were “controlled” by the Plaintiffs on the basis that this term is vague and undefined.

6. In answer to Paragraph 15 of the Third-Party Complaint, the SS Companies admit the allegations in the paragraph, except to deny the allegation that Sports Shinko Resort Hotel Corporation was a party to the PSA.

7. In answer to Paragraphs 18 and 19 of the Third-Party Complaint, the SS Companies state that the referenced complaints speak for themselves and on that basis deny the allegations in this paragraph.

8. In answer to Paragraphs 23 and 27 of the Third-Party Complaint, the SS Companies state that the referenced documents speak for themselves and on that basis deny the allegations in these paragraphs.

9. In answer to Paragraphs 22, 26, and 30 of the Third-Party Complaint, the SS Companies incorporate by reference those portions of the above answer that correspond to the paragraphs of the Third-Party Complaint referenced in paragraphs 22, 26, and 30 of the Third-Party Complaint.

10. Any allegation not specifically admitted herein is denied.

### **THIRD DEFENSE**

11. The KG Entities' claims are barred by the claims raised by Plaintiffs in their Complaints and the SS Companies in their Third-Party Counterclaims, including but not limited to violations of Chapter 651C of the Hawaii Revised Statutes, Breach of Fiduciary Duty, and Creditor Fraud.

### **FOURTH DEFENSE**

12. The KG Entities' claims are barred by the doctrines of unclean hands and *in pari delicto*.

### **FIFTH DEFENSE**

13. The KG Entities' claims are barred by the doctrines of waiver and estoppel.

### **SIXTH DEFENSE**

14. The KG Entities' claims are barred by fraud.

### **SEVENTH DEFENSE**

15. The KG Entities' claims are barred by illegality.

**EIGHTH DEFENSE**

16. The KG Entities' claims are barred by provisions of the Purchase and Sale Agreement and related documents on which their claims are based.

**NINTH DEFENSE**

17. The KG Entities' claims are barred because any damages alleged by the KG Entities are due to their own actions or omissions, and/or those of their agents and/or those for whose actions it is charged by law with responsibility, and were not caused by the SS Companies.

**TENTH DEFENSE**

18. The KG Entities' claims are barred because of their failure to avoid and/or mitigate their alleged damages.

WHEREFORE, the SS Companies pray that this Court:

A. Dismiss the Third-Party Complaint against them with prejudice.

B. Award the SS Companies their attorneys' fees and costs herein.

C. Grant the SS Companies such further and other relief that the Court deems just and proper under the circumstances.

DATED: Honolulu, Hawai'i, March 7, 2007.

          /s/ Glenn T. Melchinger            
PAUL ALSTON  
GLENN T. MELCHINGER  
JASON H. KIM

Attorneys for Plaintiffs  
and Third-Party Defendants,  
the SS Companies